

Request for Proposals

ADVERTISING AND RESEARCH SERVICES

PROJECT NO. DEXR9200046



MARYLAND ENERGY
ADMINISTRATION

Issue Date: 09/30/2008

NOTICE

Prospective Offerors who have received this document from the Maryland Energy Administration's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them.

Minority Business Enterprises are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO OFFERORS/CONTRACTORS**

In order to help us improve the quality of State proposals solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to bid on this Contract, please fax this completed form to: 410-974-2250 to the attention of the Procurement Officer.

Title: **ADVERTISING AND RESEARCH SERVICES**

Project No: DEXR92000461.

If you have responded with a "no bid", please indicate the reason(s) below:

- ☐ Other commitments preclude our participation at this time.
- ☐ The subject of the solicitation is not something we ordinarily provide.
- ☐ We are inexperienced in the work/commodities required.
- ☐ Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- ☐ The scope of work is beyond our present capacity.
- ☐ Doing business with Maryland Government is simply too complicated. (Explain in REMARKS section.)
- ☐ We cannot be competitive. (Explain in REMARKS section.)
- ☐ Time allotted for completion of the bid/proposals is insufficient.
- ☐ Start-up time is insufficient.
- ☐ Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- ☐ Bid/Proposals requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- ☐ MBE requirements. (Explain in REMARKS section.)
- ☐ Prior State of Maryland Contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- ☐ Payment schedule too slow.
- ☐ Other: _____

2. If you have submitted a bid or proposal, but wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS:

Offeror Name: _____ Date: _____

Contact Person: _____ Phone (____) ____ - _____

Address: _____

KEY INFORMATION SUMMARY SHEET

STATE OF MARYLAND

Request For Proposals

ADVERTISING AND RESEARCH SERVICES

PROJECT NUMBER DEXR9200046

RFP Issue Date: September 30, 2008

RFP Issuing Office: Maryland Energy Administration

Procurement Officer: Jeremy C. Rosendale
Procurement Officer
State of Maryland Executive Department
100 State Circle
Annapolis, MD 21401
410-974-3591
Fax 410-260-3830
jrosendale@gov.state.md.us

Proposals are to be sent to: Maryland Energy Administration
1623 Forest Drive, Suite 300
Annapolis, Maryland 21403
Attention: Brandon Farris

Pre-Proposal Conference: October 14, 2008 10:00 AM Local Time
1623 Forest Drive, Suite 300
Annapolis, Maryland 21403

Closing Date and Time: October 30, 2008 – 2:00 PM Local Time

NOTE

Prospective Offerors who have received this document from the Maryland Energy Administration's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them.

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

- 1.1.1 The Maryland Energy Administration (MEA), hereinafter referred to as MEA, desires to enter into a contract to provide advertising, research and public relations services.

As a result of this RFP, MEA desires to enter into a Contract with one Contractor to provide services in three (3) functional areas that are:

- I. Creative Services
- II. Media Services
- III. Research

The services included in these three functional areas include, but are not limited to Television, Radio, Print, Outdoor, Point of Sale, Direct Response, Public Relations, Promotions, Collateral Development, Branding, Marketing Planning and Support, Research, Product Development and full Media Support Services, strategic development, creative design and production, media planning and buying, promotion development and implementation assistance, direct marketing, research support, public relations consultation, special event and trade show assistance, web site assistance, photo database management, marketing plan development as well as other related activities necessary to carry out the work set forth herein.

MEA's total annual FY 2009-2010 Marketing Budget is anticipated to be approximately \$3 million.

- 1.1.2 It is the State's intention to obtain services, as specified in this Request for Proposals, from a Contract between the successful Offeror and the State.
- 1.1.3 MEA intends to award one Contract to the Offeror whose proposal is deemed to be the most advantageous to the State.
- 1.1.4 Offerors must be able to provide all services and meet all of the requirements requested in this solicitation.

1.2 Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below:

- a. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us
- b. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of Attachment A.
- c. **Contract Manager (CM)** – The State representative for this project that is primarily responsible for Contract administration functions, including issuing written direction, compliance with terms and conditions, monitoring this project to ensure compliance with the terms and conditions of the Contract and in achieving on budget/on time/on target (e.g., within scope) completion of the project.
- d. **Contractor** – The selected Offeror that is awarded a Contract by the State.
- e. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland.

- f. **MBE** – A Minority Business Enterprise certified by the Maryland Department of Transportation under COMAR 21.11.03.
- g. **MEA** – Maryland Energy Administration.
- h. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 6:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov - keyword State Holidays.
- i. **Offeror** – An entity that submits a proposal in response to this RFP.
- j. **Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract, issuing notices to proceed, determining scope issues, and is the only State representative that can authorize changes to the Contract. MEA may change the Procurement Officer at any time by written notice to the Contractor.
- k. **Program Manager** – The person designated as the single point-of-contact in the Offeror’s proposal with the authority and knowledge to resolve contract matters on behalf of the Contractor that are not technical in nature. The Contractor may not directly bill the State for any time or activities of the Program Manager.
- l. **Request for Proposals (RFP)** – This Request for Proposals for Financial and Programmatic Management Consultant For The Maryland Energy Administration, Project Number DEXR9200046 dated September 30, 2008, including any amendments.
- m. **State** – “State” means the State of Maryland.

1.3 Contract Type

The Contract that results from this RFP shall be a Fixed Hourly Labor rate unit Price and payments for all media buys in accordance with COMAR 21.06.03.06.

1.4 Contract Duration

The Contract resulting from this RFP shall commence upon the issuance of the Notice-To-Proceed and end June 30, 2010.

1.5 Procurement Officer

The sole point of contact in the State for purposes of this RFP prior to the award of any Contract is the Procurement Officer at the address listed below:

Jeremy C. Rosendale
Procurement Officer
State of Maryland Executive Department
100 State Circle
Annapolis, MD 21401
410-974-3591
Fax 410-260-3830
jrosendale@gov.state.md.us

MEA may change the Procurement Officer at any time by written notice.

1.6 Contract Manager

The Contract Manager is:

Mr. Brandon Farris
Director of Policy and Legislative Affairs
Maryland Energy Administration
1623 Forest Drive
Annapolis, Maryland 21403
Telephone: 410-260-7523
Fax: 410-974-2250
e-mail: bfarris@energy.state.md.us

1.7 Pre-Proposal Conference

A pre-proposal conference (Conference) will be held on October 14, 2008, beginning at 10:00 AM, at 1623 Forest Drive, Suite 300, Annapolis, Maryland 21403. Attendance at the pre-proposal conference is not mandatory, but all interested Offerors are encouraged to attend in order to facilitate better preparation of their proposals.

The Pre-Proposal Conference will be summarized. As promptly as is feasible subsequent to the Pre-Proposal Conference, a summary of the Pre-Proposal Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP.

In order to assure adequate seating and other accommodations at the Pre-Proposal Conference, please e-mail, mail or fax (at (410-260-3830 the Pre-Proposal Conference Response Form to the attention of the Procurement Officer with such notice no later than 4:00 PM on October 9, 2008. The Pre-Proposal Conference Response Form is included as Attachment E to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please call no later than October 9, 2008. MEA will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the MEA web site (www.energy.maryland.gov) and other means for transmitting the RFP and associated materials, the solicitation and summary of the pre-proposal conference, Offeror questions and the Procurement Officer's responses, addenda, and other solicitation related information will be provided via e-Maryland Marketplace.

In order to receive a contract award, a vendor must be registered on eMaryland Marketplace (eMM). Registration is free. Go here to register: <https://ebidmarketplace.com/>. Click on "Registration" to begin the process and follow the prompts.

1.9 Questions

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the pre-proposal conference. If possible and appropriate, such questions will be answered at the pre-proposal conference. (No substantive question will be answered prior to the pre-proposal conference.) Questions may be submitted by mail, facsimile, or preferably, by e-mail to the Procurement Officer. Questions,

both oral and written, will also be accepted from prospective Offerors attending the Pre-Proposal Conference. If possible and appropriate, these questions will be answered at the Pre-Proposal Conference.

Questions will also be accepted subsequent to the Pre-Proposal Conference and should be submitted in a timely manner prior to the proposal due date to the Procurement Officer. Time permitting answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors who are known to have received a copy of the RFP.

1.10 Proposals Due (Closing) Date

An unbound original and four (4) bound copies of each proposal (technical and financial) must be received by the Procurement Officer, at the address listed in Section 1.5, no later than 2:00 PM (local time) on October 30, 2008 in order to be considered. An electronic version (diskette or CD) of the Technical Proposal in MS Word format must be enclosed with the original technical proposal. An electronic version (diskette or CD) of the Financial Proposal in MS Word format must be enclosed with the original financial proposal. Ensure that the diskettes are labeled with the RFP title, RFP number, and Offeror name and packaged with the original copy of the appropriate proposal (technical or financial).

Requests for extension of this date or time will not be granted. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02, proposals received by the Procurement Officer after the due date, October 30, 2008 at 2:00 PM (local time) will not be considered.

Proposals may not be submitted by e-mail or facsimile.

1.11 Duration of Offer

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date of proposals or of Best and Final Offers (BAFOs), if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.12 Revisions to the RFP

If it becomes necessary to revise this RFP before the due date for proposals, amendments will be provided to all prospective Offerors who were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. In addition, amendments to the RFP will be posted on the MEA Procurements web page and through eMarylandMarketplace. Amendments made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.

Acknowledgment of the receipt of all amendments to this RFP issued before the proposal due date must accompany the Offeror's proposal in the Transmittal Letter accompanying the Technical Proposal submittal. Acknowledgement of the receipt of amendments to the RFP issued after the proposal due date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the Offeror from complying with all terms of any such amendment.

1.13 Cancellations; Discussions

The State reserves the right to cancel this RFP, accept or reject any and all proposals, in whole or in part, received in response to this RFP, to waive or permit cure of minor irregularities, and to conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best

interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written proposals received without prior discussions or negotiations.

1.14 Oral Presentation

Offerors may be required to make oral presentations to State representatives. Significant representations made by an Offeror during the oral presentation shall be submitted in writing. All such representations will become part of the Offeror's proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations. Typically oral presentations occur approximately two weeks after the proposal due date.

1.15 Incurred Expenses

The State will not be responsible for any costs incurred by an Offeror in preparing and submitting a proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities relative to this solicitation.

1.16 Economy of Preparation

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Offeror's proposals to meet the requirements of this RFP.

1.17 Protests/Disputes

Any protest or dispute related respectively to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

1.18 Multiple or Alternate Proposals

Neither multiple nor alternate proposals will be accepted.

1.19 Access to Public Information Act Notice

An Offeror shall give specific attention to the clear identification of those portions of its proposal that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Title 10, Subtitle 6, Part III of the State Government Article of the Annotated Code of Maryland.

Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information can be disclosed. Information which is claimed to be confidential is to be placed after the Title Page and before the Table of Contents in the Technical proposal and if applicable in the Financial proposal.

1.20 Offeror Responsibilities

The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the proposals must be included in the Offeror's proposals. Additional information regarding MBE subcontractors is provided under paragraph 1.24 below. If an Offeror that seeks to perform or provide the services required by this RFP is subsidiary of another entity, all information submitted by the Offeror, such as but not limited to, references and financial reports, shall pertain exclusively to the Offeror, unless the parent organization

will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

1.21 Mandatory Contractual Terms

By submitting an offer in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms of this RFP and the Contract, attached as Attachment A. Any exceptions to this RFP or the Contract must be clearly identified in the Executive Summary of the technical proposal. A proposal that takes exception to these terms may be rejected.

1.22 Proposal Affidavit

A proposal submitted by an Offeror must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as Attachment B of this RFP.

1.23 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as Attachment C of this RFP. This Affidavit must be provided within five business days of notification of proposed Contract award.

1.24 Minority Business Enterprises

A minimum overall MBE subcontractor participation goal of 25% has been established for the services (excluding media buy portion) resulting from this contract. Attachment D – Minority Business Enterprise Participation, Instructions and Forms are provided to assist Offerors.

Each Offeror shall complete, sign and submit Attachment D-1 (Minority Business Enterprise Participation), and D-2 (Minority Business Enterprise Schedule) at the time it submits its technical response to the RFP. Failure of an Offeror to complete and sign Attachment D-1 (Minority Business Enterprise Participation) and D-2 (Minority Business Enterprise Schedule) at the time it submits its technical response to the RFP, will result in the State's rejection of the Offeror's Proposal to the RFP.

The Contractor once awarded a contract will be responsible for submitting the following forms to provide the State with ongoing monitoring of MBE Participation:

- D-3 (Outreach Efforts compliance Statement)
- D-4 (Subcontractor Project Participation Statement)
- D-5 (MBE Participation Prime Contract Paid/Unpaid MBE Invoice Report)
- D-6 (MBE Subcontractor/Contractor Unpaid MBE Invoice Report)

A current directory of certified Minority Business Enterprises is available through the Maryland State Department of Transportation, Office of Minority Business Enterprise, 7201 Corporate Center Drive Maryland 21076. The phone number is 410-865-1269.

The directory is also available at <http://www.e-mdot.com>. The most current and up-to-date information on Minority Business Enterprises is available via this website.

1.25 Arrearages

By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Contract if selected for Contract award.

1.26 Procurement Method

This Contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03.

1.27 Verification of Registration and Tax Payment

Before a corporation can do business in the State it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. It is strongly recommended that any potential Offeror complete registration prior to the due date for receipt of proposals. An Offeror's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

1.28 False Statements

Offerors are advised that section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland provides as follows:

- (a) In connection with a procurement contract a person may not willfully:
 - Falsify, conceal, or suppress a material fact by any scheme or device;
 - Make a false or fraudulent statement or representation of a material fact; or
 - Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
- (c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

1.29 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAC X-10 form can be downloaded at: http://compnet.comp.state.md.us/General_Accounting_Division/Vendors/Electronic_Funds_Transfer/default.shtml.

1.30 Non-Visual Access

Not Applicable to this Procurement

1.31 Mercury and Products That Contain Mercury

Not Applicable to the Procurement

1.32 Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland. Additional information regarding the State's Living Wage requirement is contained in the following section entitled ***Living Wage Requirements for Service Contracts (Attachment J)***. If the Offeror fails to complete and submit the required Living Wage documentation, the State may determine an Offeror to be not responsible.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$11.30 per hour, if State contract services valued at 50% or more of the total value of the contract is performed in the Tier 1 Area. If State contract services valued at 50% or more of the total value is performed in the Tier 2 Area, a bidder shall pay each covered employee at least \$8.50 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. If the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

The contract resulting from this solicitation will be deemed to be a Tier 1 contract or a Tier 2 contract depending on the location(s) from which the Contractor provides 50% or more of the services. If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the contract will be a Tier 1 contract. If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the contract will be a Tier 2 contract. If the Contractor provides more than 50% of the services from an out-of-State location, then the contract will be deemed to be a Tier 1 contract. The Offeror must identify in their Offer the location(s) from which services will be provided.

Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.

1.33 Prompt Payment Requirement

This procurement and the contract to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs and dated August 1, 2008. Promulgated pursuant to Sections 11-201, 13-205(a), and Title 14, Subtitle 3 of the State Finance and Procurement Article (SFP), and Code of Maryland Regulations (COMAR) 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Offeror who is awarded a contract must comply with the prompt payment requirements outlined in the Contract,

§31 (see Attachment A). Additional information is available on the Governor's Office of Minority Affairs (GOMA) website at:
http://www.oma.state.md.us/documents/PROMPTPAYMENTFAQs_000.pdf

SECTION 2 – MINIMUM QUALIFICATIONS

NOT APPLICABLE TO THIS RFP

SECTION 3 – SCOPE OF WORK

3.1 Purpose and Background

3.1.1. The State is issuing this solicitation for the purposes outlined in Section 1.1 of this RFP.

3.2 Vision and Mission of MEA

3.2.1 The VISION of the Maryland Energy Administration is to have a Maryland where all citizens across the State have access to clean, affordable, reliable energy in all sectors, including electricity and transportation fuels.

The MISSION of MEA is to stimulate and strengthen Maryland's energy future for the benefit of its citizens.

The Maryland Energy Administration is comprised of three (3) divisions, which may or may not utilize the services of the agency that is awarded this contract. These units and their missions are described below:

1. Energy Efficiency: This division coordinates the public resources, in conjunction with the private sector, to promote energy efficiency efforts throughout Maryland.
2. Clean and renewable energy: This office coordinates the dissemination of public information of clean energy throughout Maryland and promotes new sources of renewable power throughout the state.
3. Planning: This division is responsible for establishing short term and long term plans to address Maryland's unique energy challenges across all sectors of the economy.

The Administration has the responsibility of securing access to affordable, reliable, clean energy through incentives, public and private programs, grants and initiatives.

3.3 Scope of Work

3.3.1 The Contractor shall provide strategic planning and assistance in establishing MEA'S communication goals and strategies, defining Maryland's energy marketing needs, helping to structure on-going marketing programs; and provide new, original marketing and advertising strategies that will increase Maryland's awareness of clean, renewable energy and energy efficiency. To accomplish these goals, the Contractor shall provide services in the following areas:

- Functional Area I - Creative Services
- Functional Area II - Media Services
- Functional Area III - Research

The Contractor shall be a provide the full a range of advertising and marketing services to include account service, creative development of advertising (including, but not limited to television, radio, print, Internet, outdoor, point of sale, direct response); collateral development and production; branding, public relations; promotions, marketing, production, planning and support, research, product development, and full media support services.

MEA's current total FY 2009-2010 Marketing Budget is \$3 million. This amount is inclusive of all media, production, research, public relations and agency fees MEA will incur. Although MEA anticipates that this amount will remain constant over the term of this Contract, there are no guaranteed Marketing Budget amounts or guaranteed earnings to the Contractor.

The Contractor shall perform creative design and execution as directed by MEA including but not limited to: design of advertising, publications, copy, logo, slogan, music, and other activities needed to communicate the State's marketing message.

3.3.1.1 Functional Area I – Creative Services. All creative services staff assigned by the Contractor to MEA's account shall be pre-approved by MEA. The Contractor shall, as directed by MEA, perform creative services activities to include, but not limited to:

- Create, produce and deliver multiple advertising programs for the general market, and any potential new markets, with frequent overlapping implementation as directed by MEA. These programs will typically include, but are not limited to, a combination of the following materials: television, radio, print and out-of-home.
- Manage and coordinate the development and production of MEA broadcast, print, out-of-home, and web/internet materials as directed and approved by MEA. This process includes concept development from rough layout and storyboards (if applicable) to production of final materials;
- Work with MEA staff to develop and maintain production and product timelines and shall routinely inform appropriate MEA staff of project status;
- Maintain proposed production budgets that will be approved by MEA. No budget shall be exceeded without prior written MEA approval;
- Identify, evaluate, develop and utilize minority suppliers and talent where appropriate and possible;
- Perform a consultative role in the actual production process, including reviewing proofs;
- Provide graphic and design services to support MEA's marketing initiatives including, but not limited to, logo development, publication design, meeting/conference or special presentation materials, display materials, and specialty items;
- Provide ongoing broadcast business management services to support commercial production and use including, but not limited to, talent casting, negotiations, contracts and payments, and booking studios;
- Provide broadcast traffic services including, but not limited to, sending spots and traffic instructions to media outlets, assigning approved broadcast spots with commercial codes and titles prior to airing, generating electronic delivery and dub requests;
- Potentially investigate and report on new merchandising aids, permanent signage programs, products and suppliers that may be applicable to the success of MEA's programs. When requested by MEA, the Contractor shall provide supplier information to be used by MEA in solicitations;

- Provide digital production services including, but not limited to, film and slide processing, color or B/W laser proofs, color copies or transparencies, digital proofs, PDF proofs or files, scans, mechanical assembly, die line creation, typesetting or type formatting, digital imaging or file prep, file conversion, proofreading, or creation and/or duplication of CDs, DVDs or zip disks;
- Create and produce internet advertising to include:
 - Advertising on the internet (e.g. other web sites, targets email lists, etc.); and
 - Integration of traditional adverting materials on MEA's web site;
 - Potentially provide Web site design, development, maintenance and contest management either through in-house capabilities or through a subcontracting relationship;
- Create and produce materials to support MEA's media, venue, trade show promotions, special event and sports sponsorships;
- Be responsible for copyrighting or registering trademarks, logos, commercials, etc., as directed and approved by MEA;
- The risk of loss for MEA's property remains with the Contractor while MEA's property is in the care, custody, and control of the Contractor. In the event that the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to MEA's property, it shall use the proceeds to repair, renovate, or replace MEA's property involved, or shall credit such proceeds against the cost of the work covered by the Contract, or shall otherwise reimburse MEA.
- All materials including broadcast out takes, footage, unproduced concepts as well as print, radio and collateral jobs shall be the sole property of MEA and shall be surrendered upon request. At the end of the Contract, all documents and materials shall be returned to MEA or transferred to a repository designated by MEA. All documents and materials produced for MEA become the property of MEA with no further compensation to the Contractor.
- Work with MEA's in-house staff to complete projects as required.

3.3.1.2 Functional Area II - Media Services. All media services staff assigned by the Contractor to MEA's account shall be pre-approved by MEA. The Contractor, as directed by MEA, shall perform media services activities to include, but not limited to:

- Conduct media planning and placement of multiple advertising programs for the general market, emerging market and any potential new markets with frequently overlapping implementation schedules. Tasks include:
 - Arrange both off-line (traditional), on-line (internet based), and any new media vehicles that are available in MEA's area of focus;
 - Negotiate, place and purchase media for MEA. Contractor shall also be required to verify and reconcile invoices received from media outlets on behalf MEA;
 - Media buys will be a direct reimbursement without markup
 - Ensure on-going cost tracking and evaluation/analysis;
 - Develop briefs that detail media strategies and tactics recommended for a particular MEA initiative;
 - Provide detailed specifications of all media buys to MEA for approval prior to placing any media buy;

- Exhibit superior media negotiation skills to achieve maximum statewide and local merchandising and/or promotion opportunities (e.g. added value);
- Track and evaluate advertising programs utilizing post-buy evaluation and reporting methodologies in order to provide MEA with maximum media efficiency;
- Initiate and assist in implementation of a variety of media, special event and sports sponsorships;
- Provide promotion development and management capabilities to handle a variety of projects ranging from media-driven promotions to contests and local on-site events;
- Possibly provide direct response capabilities for developing target audiences, purchasing lists, and measuring responses to direct mail pieces, as well as database management;
- Provide, as required by MEA and subject to the review and approval of the OAG, a legal certification of sponsorship agreements with regard to intellectual property issues for media service activities, on an as needed project or task basis;
- Submit monthly reports listing completed projects to the Contractor Administrator by the 15th day of the following month. The Contractor(s) invoices shall be submitted at the same time; and
- Work with MEA's in-house staff to complete projects as required.

3.3.1.3 Functional Area III – Research. All research staff assigned by the Contractor to MEA's account shall be pre-approved by MEA. The Contractor shall, as directed by MEA, perform research activities to include, but not limited to:

- Conduct research projects on energy related topics as directed by MEA. Additionally, provide economic impact reports for specific projects such as festival and event impact, and determining the viability of new projects and programs;
- Conduct marketing research studies to meet specific marketing objectives;
- Conduct other special research, both qualitative and quantitative, as determined by MEA. Examples of other special research may include, but are not limited to, ad concept testing, market segmentation studies, focus groups for specific product testing (live and/or online), and public opinion studies;
- Work with MEA's in-house research personnel to complete projects as required. This would typically include, but not be limited to assisting in research objective definition and methodology selection; assisting in sample and questionnaire design; executing the actual research projects and delivering the research results to MEA; and performing statistical analyses of MEA data.
- Submit monthly reports listing completed projects to the Contractor Administrator by the 15th day of the following month. The Contractor(s) invoices shall be submitted at the same time; and

3.3.2 The Contractor shall provide Account Management:

3.3.2.1 With in-depth attention to organizing, planning, supervising and reviewing all MEA projects and budgets assigned by the Contract Manager. The Contractor shall provide the level of service (number and

experience of employees and corresponding number of full-time equivalents) throughout the term of the Contract. All management representatives assigned or removed from MEA's account management team shall be approved by MEA prior to taking any action. The Contractor shall notify the Contract Manager of all proposed changes in the Account Management Team. MEA reserves the right to approve or reject proposed personnel changes.

3.3.2.2 With at least one (1) primary contact. Primary account contact(s) shall possess the specified skills and be responsible for the following:

1. Account Team leadership, experienced in marketing communications disciplines and practices, with an ability to communicate clearly and in a timely manner with both MEA staff and the Contractor's staff members on the account team;
2. Resource management skills, as well as the ability to inspire the "best work possible" from its organizational staff and its sub-contractor resources;
3. Familiarity with consumer and lifestyle marketing;
4. Budget consciousness and management skills paying continuing attention to costs and cost controls to maximize quality consistent with budgetary constraints;
5. Clear presentation of ideas, as well as listening and responding, respectively;
6. Compatibility with MEA advertising and communications staff; and
7. Identifying and developing resources within Maryland.

3.3.2.3 That shall attend various planning meetings with MEA staff and/or other MEA contractors. The team shall be available for in-person or conference call discussions with MEA on a weekly basis, at minimum. The frequency of such discussions and number of Contractor personnel involved will depend on the scope and number of the project(s) underway.

3.3.2.4 That shall work with MEA in the development and execution of an integrated marketing program with the following overall objectives:

1. To encourage consumers to make energy efficiency (in homes, businesses and cars) a part of their daily life.
2. To creatively engage those consumers who have the greatest propensity to purchase renewable energy systems for their homes such as solar and geothermal.

3.3.2.5 For Functional Areas I, II & III, the Contractor will be paid a Hourly Rate to perform the required services, which includes the expenditure and management of MEA'S Marketing Budget funds.

3.3.3 All work performed by the Contractor under this contract shall become the exclusive property of MEA. Additionally, all original text artwork, media materials, etc. shall be given to MEA at the time designated by the Contract Manager or designee. Material that is subject to a third party intellectual property control is not included in this requirement.

3.34 Any artwork, marketing/strategic plans, production pieces or other specific project work requested of the Contractor by MEA, shall be for MEA's exclusive use. The Contractor shall not release any work product to any person or entity other than MEA without the specific written consent of the Contract Administrator.

3.35 All work performed by the Contractor or its Subcontractors, including all MEA related financial records shall be subject to MEA review upon request.

3.36 The Contractor shall submit monthly recap reports which include current expenditures by project. Additionally, the Contractor shall be required to attend quarterly budget update meetings at a time and location in Maryland designated by the Contract Administrator or his/her designee.

3.4 Task Orders

3.4.1 MEA shall submit a Task Order Request (TOR) to the Contractor and receive back within a specified period of time, a Task Order Proposal (TOP) which will include a written scope of work and itemized project estimate for the project.

3.4.2 MEA will issue a TOR to the Contractor outlining the designated project. This TOR will identify a response time due date to MEA. The Contractor must be able to provide short notice (3 business days) service and rapid response to requests for the initiation or modification of TORs.

3.4.3 The Contractor shall develop TOP which is a written scope of work in response to the TOR and itemized project estimate (must include all related costs associated with the specified task order) requested by the Contract Manager within the schedule designated by the task order request.

3.4.4 The Contractor shall perform task orders according to the approved written specifications along with quality and quantity guidelines. Any work performed by the Contractor under any task order shall be subject to the approval of the Contract Manager or designee and may be rejected. If any work is disapproved, The Contract Manager shall provide the Contractor will sufficient detail to allow the Contractor to make appropriate revisions

3.4.5 The Contract Manager must approve the Contractor's TOP(s) and issue an departmental purchase order prior to any commencement of services to be performed. The Contractor may not proceed with any project without required purchaser order. Invoices may not exceed the approved project estimate.

3.5 Personnel

3.4.1 The Contractor shall provide personnel to satisfy the requirements of Sections 3.2 through 3.3.

Program Manager: responsible for overseeing the efforts of both the creative design, research and administrative support personnel. The Program Manager is the Contractor's manager for the overall contract, and serves as the single point of contact for the Contractor with the State regarding the contract. Performs overall management for contract support operations. Organizes, directs, and coordinates the planning and production of all contract activities, projects, and support activities, including subcontractors. Oversees the development of or develops work breakdown structures, charts, tables, graphs, major milestone calendars and diagrams to assist in analyzing

problems and making recommendations. Demonstrates excellent written and verbal communications skills. Establishes and alters corporate management structure to direct effective and efficient contract support activities. Must be capable of negotiating and making binding decisions for the Contractor.

Creative Design professional: professionals responsible for the creative output, such as graphic design, creating logos, advertisements, etc.

Research assistant: responsible for any research efforts, including qualitative and quantitative data as required by MEA. Provides expertise and supports evaluations of program results and potential changes to program results related to investments along with an analysis and presentations of alternatives. Requires experience in conducting quantitative analyses using operations research tools, and other quantitative techniques.

Administrative specialist: Provides administrative assistance to include office management, copying and reproducing of required outputs. Requires expertise in office systems supporting project documentation and final products

The Contractor shall only invoice the MEA for work performed on any task order using only these labor classes and contracted rate for those classes. No other labor classes are allowed for work performed.

3.4.2 Substitution of Personnel

Substitutions will be allowed only when MEA Contact Manager specifically agrees to the substitution in writing or due to an emergency circumstance. All proposed substitutes of personnel must have qualifications at least equal to that of the person initially proposed and evaluated and accepted in the Contract. The burden of illustrating this comparison shall be the Contractor's. All proposed substitutions of personnel for other than emergency situations must be submitted in writing, at least 15 business days in advance of the proposed substitution, to MEA. MEA must agree to the substitution in writing before such substitution shall become effective.

3.6 Reports

3.6.1 The Contractor shall provide monthly written Status/Progress Reports to the Contact Manager throughout the period of performance. Reports will be submitted to the Contract Manager no later than the 15th calendar day of the following month.

3.6.2 The Contractor and its MBE subcontractor(s) shall provide monthly reports as required in Attachment D.

3.6.3 The Contractor shall submit an Assessment of Market Effectiveness within thirty (30) days after completion of a task order. The shall include:

Advertising campaigns

Public relations efforts

Promotional materials

Creative design and strategies

Research and assessments

3.6.4 The Contractor shall submit an Annual Marketing Effectiveness Report 30 days prior to the end of contract. This report shall summarize the effectiveness of the marketing program and provide recommendations for future planning (e.g., why the program worked or did not work, program changes or improvements that should be made to address changes in the audience situation, new market segmentation, new message concepts, new channels for distribution).

3.6.5 The Contractor shall provide monthly Budget Status Reports and Stewardship Reports to the Contract Manager within 15 days of the close of the preceding month. All reports shall be based on the State's fiscal year (July 1-June 30). These reports shall include, but may not be limited to, description and status of projects, monthly accounting for amount committed, amount spent, remaining balance, minority utilization, and summaries of uncommitted balances under the contract. Problems, irregularities and late payments by either contractor or subcontractors for media shall be noted. The reports shall identify all projects by MEA's purchase order number. A copy of all Status Reports and Stewardship Reports shall be submitted to MEA's Office of Finance, ATTN: Leslie Binkley and to the Contract Manager.

3.7 Security and Confidentiality

MEA may require the Contractor and its subcontractors to sign confidentiality agreements (Attachment H) or comply with security policies or practices.

3.8 Invoicing

3.6.1 All invoices for services shall be submitted to the Contract Manager no later than 30 calendar days following the month the service was provided and include the following information: Maryland Energy Administration, 1623 Forest Drive, Suite 300, Annapolis, Maryland 21403, Contractor name, remittance address, federal taxpayer identification or (if owned by an individual) his/her social security number, invoice period, invoice date, invoice number, amount due and the purchase order number(s) being billed along with documentation on the individuals and hours worked on each task. Invoices submitted without the required information will not be processed for payment until the Contractor provides the required information.

3.6.2 Contractor shall have a process for resolving billing errors.

3.9 Insurance

3.7.1 The Contractor shall maintain property and casualty insurance with minimum limits sufficient to cover losses resulting from or arising out of Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees or subcontractors.

3.7.2 The Contractor shall maintain a policy of general liability insurance that is of the proper type and limits specified below.

3.7.3 The Contractor shall provide a copy of the Contractor's current certificate of insurance, that, at a minimum, shall contain the following:

A) Worker's Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.

B) General Liability - The Contractor shall purchase and maintain the following insurance protection for liability claims arising as a result of the Contractor's operations under this agreement.

\$2,000,000 - General Aggregate Limit (other than products/completed operations)

\$2,000,000 - Products/completed operations aggregate limit

\$1,000,000 - Each Occurrence Limit

\$1,000,000 - Personal and Accidental Injury Limits

\$ 50,000 - Fire Damage Limit

\$ 5,000 - Medical Expense

\$1,000,000 – Errors and Omissions

3.7.4 Upon execution of a Contract with the State, Contractor shall provide the State with current certificates of insurance, and shall update such certificates from time to time, as directed by the State.

3.7.5 The State shall be named as an additional named insured on the policies of all property, casualty, liability, and other types of insurance evidencing this coverage (Worker's Compensation excepted). Certificates of insurance evidencing this coverage shall be provided prior to the commencement of any activities in the Contract. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Procurement Officer, by certified mail, not less than 60 days advance notice of any non-renewal, cancellation, or expiration. In the event the State receives a notice of non-renewal, the Contractor shall provide the State with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.

3.7.6 The Contractor shall require that any subcontractors obtain and maintain similar levels of insurance and shall provide the State with the same documentation as is required of the Contractor.

3.10 State Furnished Work Site, And/Or Access To Equipment, Facilities, Or Personnel

3.8.1 MEA will not provide any typical office space nor furnishings (desk, phone, computer, fax access, etc).

SECTION 4 – PROPOSAL FORMAT

4.1 Two Part Submission

Offerors shall submit proposals in separate volumes:

- Volume I - TECHNICAL PROPOSAL
- Volume II - FINANCIAL PROPOSAL

4.2 Proposals

Volume I-Technical Proposal shall be sealed separately from Volume II-Financial Proposal but submitted simultaneously to the Procurement Officer (address listed on Key Information Summary). An unbound original, so identified, and four (4) copies of each volume are to be submitted. An electronic version of both the Volume I- Technical Proposal in MS Word format and the Volume II- Financial Proposal in MS Word format shall also be submitted with the unbound originals technical or financial volumes, as appropriate. Electronic media is to be submitted on a CD and shall bear a label on the outside containing the RFP number and name, the name of the Offeror and the volume number.

4.3 Submission

Each Offeror is required to submit a separate file for each "Volume", which is to be labeled Volume I- Financial and Programmatic Management Consultant Technical Proposal and Volume II- Financial and Programmatic Management Consultant Financial Proposal. Each file shall bear the RFP title and number, name and address of the Offeror, the volume number (I or II), and closing date and time for receipt of the proposals.

All pages of both proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").

4.4 Volume I – Technical Proposal

4.4.1 Transmittal Letter

A transmittal letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. See Offeror's responsibilities in Section 1.20.

4.4.2 Additional Required Technical Submissions

- A) Completed Bid/Proposal Affidavit (Attachment B – with original of Technical Proposal only)
- B) Completed Minority Business Participation Forms (Attachments D-1 and D-2 with original of Technical Proposal only)
- C) Completed Non-Disclosure Affidavit (Attachment G with original of Technical Proposal)
- D) Completed Conflict of Interest Affidavit (Attachment H with original of Technical Proposal)
- E) Completed Living Wage Affidavit (Attachment J—with original of Technical Proposal only).

4.4.3 Format of Technical Proposal

Inside a sealed package described in Section 4.3, above, an unbound original, to be so labeled, four copies and the electronic version shall be provided. Section 3 of this RFP provides requirements and Section 4 provides reply instructions. The paragraphs in these RFP sections are numbered for ease of reference. In addition to the instructions below, the Offeror's Technical Proposals should be organized and numbered in the same order as this RFP. This proposal organization will allow State officials and the Evaluation Committee to "map" Offeror responses directly to RFP requirements by paragraph number.

The Technical Proposal shall include the following section in this order:

4.4.4 Title and Table of Contents

The Technical Proposal should begin with a title page bearing the name and address of the Offeror and the name and number of this RFP. A table of contents shall follow the title page for the Technical Proposal. Note: Information which is claimed to be confidential is to be placed after the Title page and before the Table of Contents in the Offeror's Technical Proposal, and if applicable, also in the Offeror's Financial Proposal. An explanation for each claim of confidentiality shall be included.

4.4.5 Executive Summary

The Offeror shall condense and highlight the contents of the technical proposal in a separate section titled "Executive Summary".

The summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. If no exceptions to terms and conditions are made, the summary shall indicate this.

4.4.6 Offeror Experience and Capabilities

Offerors shall include information on past experience with similar projects/services. Offerors shall describe how their organization can meet the qualifications of this RFP and shall include the following:

4.4.6.1 An overview of the Offeror's experience and capabilities providing services. This description shall include:

- An overview of the Offeror's experience providing services outlined in this RFP. This description shall include a general summary of the services offered in terms of:
 - o The extent of similar services to those required under this RFP
 - o The number of years the Offeror has provided these services
 - o The number of clients and geographic locations the Offeror currently serves
- References. Provide all or a reasonable number of specific references who are capable of documenting:
 - o The Offeror's ability to manage and perform services of the type described in this RFP
 - o The quality and breadth of services provided by the Offeror
 - o Each client reference must include the following information:
 - Name of client organization.
 - Name, title, and telephone number of point-of-contact for client organization.
 - Value, type, and duration of contract(s) supporting client organization.

- The services provided, scope of the contract, geographic area being supported, performance objectives satisfied, and improvements made for the client.

4.4.6.2 As part of its proposal, each Offeror is to provide a list of all contracts with any entity of the State of Maryland that it is currently performing or which have been completed within the last 5 years. For each identified contract the Offeror is to provide:

- The State contracting entity
- A brief description of the services/goods provided
- The dollar value of the contract
- The term of the contract
- The State employee contact person (name, title, telephone number and if possible e-mail address)
- Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the offeror's level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

Note:

(1) The Procurement Officer or a designee will contact the identified State agencies or the most appropriate ones, if many contracts are involved, to ascertain the Offeror's level of performance on State contracts. Information obtained regarding the Offeror's level of performance on State contracts will be considered as part of the experience and past performance evaluation criteria of the RFP.

(2) MEA shall have the right to contact any reference as part of the evaluation and selection process. MEA also reserves the right to request site visits to the Offeror's offices for the purpose of evaluating proposals.

MEA reserves the right to request additional references.

4.4.7 Offeror Technical Response to RFP Requirements

The Offeror shall address each element of Section 3 in its Technical Proposal and describe how its proposed services will meet the requirements as described in the RFP. The Offeror shall identify the location(s) it proposes to provide the service, any current facilities that it operates at that location, and any required construction to satisfy the State's requirements as outlined in this RFP. If the State is seeking Offeror agreement to a requirement, the Offeror shall state agreement or disagreement.

As stated above, any exception to a term or condition may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. Any paragraph that responds to a work requirement shall include an explanation of how the work will be done.

Note: No pricing information is to be included in the Technical Proposal (Volume I). Pricing will only be included in the Financial Proposal (Volume II).

4.4.8 Offeror's Understanding and Project Management Methodology

In its proposal the Offeror should describe its overall approach for managing a Contract and satisfying the requirements of this RFP. Topics to be addressed include:

- A. ***Understanding*** - The Offeror's understanding of the media/advertising services to be provided. This should demonstrate an understanding of the services expected under this Contract.
- B. ***Project Management Methodology*** - The Offeror's approach to managing the overall project identified in this RFP. The overall Project Management approach should include the following items:
 - Project Organization (including identification and role of subcontractors).
 - Offeror Support Resources that will be available, including Personnel and Technology Resources.
 - Project Management Planning and Tracking System.
 - Project Reporting Methodologies.
 - The personnel who will participate in periodic, scheduled meetings with MEA personnel and the manner in which the Offeror will provide updates/progress reports.
 - The availability of the Offeror to perform this Contract, including the flexibility to dedicate staff to these efforts.

4.4.9 Personnel

Identify all proposed personnel and the Contractor's Program Manager. Provide a resume for all proposed personnel. Also, identify and include the names and titles of the key management personnel directly involved with supervising the services rendered under this Contract.

4.4.10 Economic Benefit to Maryland

Offeror shall submit with the proposals a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of the performance of this contract. Proposals will be evaluated to assess the following economic benefit factors.

- A. Percentage of contract dollars to be recycled into Maryland's economy in support of the contract, through the use of Maryland subcontractors, suppliers and joint venture partners. Be as specific as possible.
- B. The number and types of jobs for Maryland residents resulting from the contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed at both prime and, if applicable, subcontract levels.
- C. Tax revenues to be generated for Maryland and its political subdivisions as a result of the contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the contract.

- D. Other benefits to the Maryland economy, which the Offeror promises, will result from awarding to the Offeror. Describe the benefit, its value to the Maryland economy and how it will result from the contract award.

4.4.11 Subcontractors

Offerors shall identify all subcontractors, including MBE's, and the role these subcontractors will have in the performance of the Contract.

4.4.12 Specific Information Required By Functional Area/Assignment

The Assignments listed below by Functional Area are presented at this time for informational purposes only. These Assignments are not to be submitted at the time of submission of the Offeror's original Technical Proposal. After an initial review of technical proposals, Offerors that are determined to be Qualified Offerors may be invited to submit a written response to the Assignments for the three (3) Functional Areas and to make an oral presentation to the Technical Committee to present its materials developed for the Assignments.

4.4.12.1 Functional Area I - Creative Assignment:

1. Maryland has faced dramatic price spikes for electricity in the last couple years. Energy efficiency can lower consumers bills despite rates going up. Please provide your perspective on how your organization would prepare justification for the expansion of marketing and communications strategy to teach consumers better energy efficiency habits.
2. It is imperative that Maryland begin to position itself as a world-class business destination for clean/renewable energy. What creative strategy would you use to develop the marketing solution to the state's lack of identity in a crowded, competitive marketplace?

4.4.12.2. Functional Area II - Media Assignment:

As stated above, MEA has not been able to be competitive in the marketplace for business retention and relocation due to limited funds. That situation has not changed. How would you stretch a \$100,000 media placement budget so that it would be impactful?

4.4.12.3. Functional Area III - Research Assignment:

1. Provide an example of an annual research plan you have prepared and executed for a client within the past two (2) years. What were the goals of this program? How was this program similar or different from what you envision recommending for MEA? Provide any results that you are able to share.
2. Provide your position on how marketing research can help measure advertising effectiveness.

4.5 Volume II - Financial Proposal
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- 4.5.1 Under separate sealed cover from the Technical Proposal and clearly identified with the same information noted on the Technical Proposal, the Offeror must submit an unbound original, four (4) copies, and an electronic version in Microsoft Word or Excel of the Financial Proposal.
- 4.5.2 In order to assist offerors in the preparation of their price proposals, Attachment F-Price Proposal Form has been provided. Offerors must submit their price proposal on this form in accordance with the instructions on the form and as specified herein. Do not change or alter this form.
- 4.5.3 Nothing shall be entered on the Price Proposal Form that alters or proposes conditions or contingencies on the proposed prices or offer.
- All Unit and Extended Prices must be clearly typed with dollars and cents, e.g. \$24.15;
 - All Unit Prices must be the actual price the State will pay for the proposed item per this RFP and may not be contingent on any other factor or condition in any manner;
 - All goods or services required or requested by the State and proposed by the offeror at No Cost to the State must be clearly typed in the Unit and Extended Price with N/C.
 - The forms are provided for the offeror to price each proposed item that meets all of the requirements as specified in this RFP. These prices must include, except where indicated otherwise on the form, all costs associated with the service.

SECTION 5– EVALUATION CRITERIA AND SELECTION PROCEDURE

5.1 Evaluation Criteria

Evaluation of the proposals will be based on the criteria set forth below. The Contracts resulting from this RFP will be awarded to the Offeror that is most advantageous to the State, considering price and the technical factors set forth herein. In making this determination, technical will receive greater weight than price factors.

5.2 Technical Criteria

The criteria to be applied to each Technical Proposal are listed in descending order of importance:

- **Offeror Experience and Capabilities (RFP 4.4.6)**
- **Offeror Technical Response to RFP Requirements (RFP 4.4.7)**
- **Offeror's Understanding and Project Management Methodology (RFP 4.4.8)**
- **Personnel (RFP 4.4.9)**
- **Economic Benefit to Maryland (RFP 4.4.10)**
- **Specific Information Required By Functional Area/Assignment (RFP 4.4.12)**
- **Subcontractors (RFP 4.4.11)**

5.3 Financial Criteria

All qualified Offerors will be ranked from the lowest to the highest price based on their total price proposed within the stated guidelines (as submitted on Attachment F—Price Proposal Form).

5.4 Reciprocal Preference

Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference will be given if: a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the services required under this RFP is in another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and, the preference does not conflict with a Federal law or grant affecting the procurement Contract. The preference given shall be identical to the preference that the other state, through law, policy or practice gives to its residents.

5.5 Selection Procedures

5.5.1 General Selection Process

The Contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03. The competitive sealed proposals method is based on discussions and revision of proposals during these discussions.

Accordingly, the State may hold discussions with all Offerors judged reasonably susceptible of being selected for award, or potentially so. However, the State also reserves the right to make an award without

holding discussions. In either case of holding discussions or not doing so, the State may determine an Offeror to be not responsible and/or an Offeror's proposal to be not reasonably susceptible of being selected for award, at any time after the initial closing date for receipt of proposals and the review of those proposals. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, an Offeror's financial proposal will be returned unopened.

5.5.2 Selection Process Sequence

- 5.5.2.1 The first step in the process will be an evaluation for technical merit. During this review oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform, and to facilitate arrival at a Contract that will be most advantageous to the State. For scheduling purposes, Offerors should be prepared to make an oral presentation and participate in discussions within two weeks of the delivery of proposals to the State. The Procurement Officer will contact Offerors when the schedule is set by the State.
- 5.5.2.2 Offerors must confirm in writing any substantive oral clarification of, or change in, their proposals made in the course of discussions. Any such written clarification or change then becomes part of the Offeror's proposal.
- 5.5.2.3 The financial proposal of each qualified Offeror will be evaluated separately from the technical evaluation. After a review of the financial proposals of qualified Offerors, the Procurement Officer may again conduct discussions to further evaluate the Offeror's entire proposal.
- 5.5.2.4 When in the best interest of the State, the Procurement Officer may permit Offerors who have submitted acceptable proposals to revise their initial proposals and submit, in writing, best and final offers (BAFOs). However, the State reserves the right to make an award without issuing a BAFO if/when it's determined to be in the State's best interest.

5.5.3 Award Determination

Upon completion of all discussions and negotiations, reference checks, and site visits, if any, the Procurement Officer will recommend award of the Contract to the responsible Offeror whose proposal is determined to be the most advantageous to the State considering technical evaluation factors and price factors as set forth in this RFP.

In making the most advantageous Offeror determination, technical factors will be given greater weight than price factors.

ATTACHMENTS

ATTACHMENT A is the State's Contract. It is provided with the RFP for informational purposes and is not required at proposal submission time. However, it must be completed, signed and returned by the selected Offeror to the Procurement Officer expeditiously upon notification of proposed Contract award.

ATTACHMENT B – Bid/Proposal Affidavit. This form must be completed and submitted with the Offeror's technical proposal.

ATTACHMENT C – Contract Affidavit. It is not required at proposals submission time. It must be submitted by the selected Offeror to the Procurement Officer within 5 working days of notification of proposed award.

ATTACHMENT D – MINORITY BUSINESS ENTERPRISE PARTICIPATION INSTRUCTIONS AND FORMS D-1 THROUGH D-6. Forms D-1 and D-2 must be completed and submitted with the Offeror's technical proposal.

ATTACHMENT E – Pre-Proposal Conference Response Form. It is requested that this form be completed and submitted as described in RFP section 1.7 by those potential Offerors who plan on attending the conference.

ATTACHMENT F –Price Proposal Instructions and Forms. Price Proposal forms must be completed and submitted as the Financial Proposal.

ATTACHMENT G – Non-Disclosure Form.

ATTACHMENT H – Conflict of Interest Affidavit.

ATTACHMENT I – Living Wage Information.

ATTACHMENT J – Living Wage Affidavit. This form must be completed and submitted with the Offeror's technical proposal.

ATTACHMENT A – CONTRACT

Financial and Programmatic Management Consultant For The Maryland Energy Administration

THIS CONTRACT (the “Contract”) is made this ____ day of _____, 2008 by and between _____ and the STATE OF MARYLAND, acting through the MARYLAND ENERGY ADMINISTRATION.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “Contract Manager” means Brandon Farris of the Department.
- 1.2 “Contractor” means _____ whose principal business address is _____ and whose principal office in Maryland is _____.
- 1.3 “Department” means the Maryland Energy Administration.
- 1.4 “Financial Proposal” means the Contractor’s Financial Proposal dated _____.
- 1.5 “Procurement Officer” means Jeremy Rosendale of the Department.
- 1.6 ”RFP” means the Request for Proposals for Financial and Programmatic Management Consultant For The Maryland Energy Administration, Project DEXR9200046, and any amendments thereto issued in writing by the State.
- 1.7 “State” means the State of Maryland.
- 1.8 “Technical Proposal” means the Contractor’s Technical Proposal, dated _____.

2. Scope of Work

2.1 The Contractor shall provide all deliverables as defined in the RFP Section 3. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

- Exhibit A – The RFP
- Exhibit B – The Technical Proposal
- Exhibit C – The Financial Proposal
- Exhibit D - State Contract Affidavit, executed by the Contractor and dated _____

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this

section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

2.3 Modifications to this Contract may be made provided (a) the modifications are made in writing; (b) all parties sign the modifications; and (c) approval by the required agencies, as described in COMAR, Title 21, is obtained.

3. Time for Performance.

The Contract resulting from this RFP shall commence upon the issuance of the Notice-To-Proceed and end June 30, 2009. The Contractor shall provide services upon receipt of a Notice to Proceed from the Procurement Officer.

4. Consideration and Payment

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the rates specified on Exhibit C, Contractor's Financial Proposal. Except with the express written consent of the Procurement Officer, payment to the Contractor pursuant to this Contract shall not exceed \$_____. Contractor shall notify the Contract Manager, in writing, at least 60 days before payments reach the specified amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (i) promptly consult with the State and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached; and (ii) secure data bases, systems, platforms and/or applications which the Contractor is working on so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is _____. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Invoices shall be submitted to the Contract Manager. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.4 Contractor's eMarylandMarketplace vendor ID number is _____.

5. Rights to Records

5.1 The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

5.3 The Contractor shall report to the Contract Manager, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

6. Exclusive Use

The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

7. Patents, Copyrights, Intellectual Property

7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

8. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

9. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms and/or applications with which the Contractor is working hereunder.

10. Indemnification

10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.

10.2 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

10.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

10.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

11. Non-Hiring of Employees

No official or employee of the State, as defined under State Government Article, § 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law

13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

13.2 The Maryland Uniform Computer Information Transactions Act, Maryland Code Annotated, Commercial Law Article, Title 22, does not apply to this Contract, or to any purchase order, or Notice to Proceed, issued under this Contract.

13.3 Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

16. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

19. Delays and Extensions of Time

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

20. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

21. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

22. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, §§14-101 - 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

24. Retention of Records

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after Contract closeout and final payment by the State under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, Contractor shall provide assistance to the State, without additional compensation, to identify, investigate and reconcile any audit discrepancies and/or variances.

25. Compliance with Laws

The Contractor hereby represents and warrants that:

A. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,

D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

26. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its bid or offer.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its bid or offer, was inaccurate, incomplete, or not current.

27. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of Sections 11 and 13 through 26 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

28. Prompt Payment Requirements and MBE Compliance

28.1. If a Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:

- (a) Not process further payments to the Contractor until payment to the subcontractor is verified
- (b) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
- (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
- (e) Take other or further actions as appropriate to resolve the withheld payment.

28.2. An "undisputed amount" means an amount owed by a Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation, (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

- 28.3. An act, failure to act, or decision of a procurement officer or a representative of the Department, concerning a withheld payment between a Contractor and subcontractor under this provision, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
 - (b) Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
 - (c) Result in liability against or prejudice the rights of the Department.
- 28.4. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
- 28.5. To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
 - (b) This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.
 - iv. Verification shall include a review of:
 - a. The Contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
 - b. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
 - (c) If the Department determines that a Contractor is in noncompliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
 - (d) If the Department determines that a Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.
 - (e) Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

29. Liability

29.1 For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

- A. For infringement of patents, copyrights, trademarks, service marks and/or trade secrets, as provided in Section 7 of this Contract;

B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;

C. For all other claims, damages, losses, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited to three (3) times the total dollar amount of the Contract value up to the date of settlement or final award of any such claim. Third party claims arising under Section 10, "Indemnification", of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

29. Parent Company Guarantee (If Applicable)

[Corporate name of Parent Company] hereby guarantees absolutely the full, prompt and complete performance by "[Contractor]" of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations and liabilities. "[Corporate name of Parent Company]" may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. "[Corporate name of Parent Company]" further agrees that if the State brings any claim, action, suit or proceeding against "[Contractor]", "[Corporate name of Parent Company]" may be named as a party, in its capacity as Absolute Guarantor.

30. Commercial Non-Discrimination

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by MEA, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and

suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

31. Administrative

31.1 Procurement Officer. The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

31.2 Notices. All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State: Maryland Energy Administration
1623 Forest Drive, Suite 300
Annapolis, Maryland 21403

Attention: _____

If to the Contractor: _____

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND

BY: MARYLAND ENERGY ADMINISTRATION

By: _____

By: Malcolm Woolf, Director

Date

Date

Witness

Witness

Approved for form and legal
sufficiency this ____ day _____, 2008.

Assistant Attorney General

ATTACHMENT B – BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____ and the duly authorized representative of (business) _____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

K. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
- (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business' policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;
- (h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
- (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
- (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic ____) (foreign ____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____.

(If not applicable, so state).

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

N. Repealed.

O. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____ (Authorized Representative and Affiant)

ATTACHMENT C - CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the _____ (Title) and the duly authorized representative of _____ (Company) and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic____) (foreign____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name:_____

Address:_____.

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date:_____ By:_____

(Authorized Representative and Affiant)

ATTACHMENT D – MINORITY BUSINESS ENTERPRISE

MARYLAND ENERGY ADMINISTRATION

The Contractor shall structure its procedures for the performance of the work required in this contract to attempt to achieve the Minority Business Enterprise (MBE) participation goal stated in the Invitation for Bids (IFB) or Request for Proposals (RFP). MBE performance must be in accordance with this Attachment, as authorized by Minority Business Enterprise Policies as set forth by 21.11.03 of the Code of Maryland Regulations (COMAR). Accordingly, the Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Attachment.

DEFINITIONS

As used in this Attachment, the following words have the meanings indicated.

- ♦ “Certification” means a determination made by the Maryland Department of Transportation that a legal entity is a minority business enterprise.
- ♦ “MBE Liaison” is the employee designated to administer this Department’s MBE program.
- ♦ “Minority Business Enterprise” or “MBE” means any legal entity, other than a joint venture, organized to engage in commercial transactions, that is:
 - (1) at least 51 percent owned and controlled by one or more individuals who are socially and economically disadvantaged; and
 - (2) managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

Note: A minority business enterprise also includes a not-for-profit entity organized to promote the interests of physically or mentally disabled individuals. An MBE **must** be certified by the Maryland Department of Transportation (MDOT) in order to have its contract participation counted under the Department’s MBE program.

MINORITY BUSINESS ENTERPRISE INSTRUCTIONS AND FORMS

A. MBE Participation Goals and sub-goals

The Contractor shall achieve the MBE subcontracting goal and any sub-goals established for this contract, by subcontracting to one or more MDOT-certified Minority Business Enterprises a sufficient portion of the contract's scope of work that results in total MBE payments that meet or exceed the MBE participation goal.

If awarded the Contract:

- A prime contractor – including an MBE or certified Small Business Reserve (SBR) prime contractor – must accomplish an amount of work not less than the MBE participation goal with certified MBE subcontractors.
- A prime contractor comprising a joint venture that includes MBE partner(s) must accomplish the MBE participation goal with certified MBE subcontractors.

B. Solicitation and contract formation

1. Reporting Instructions for Submission of Bid or Offer:

a. The bidder or offeror must **include the following reports with its bid or offer:**

- 1) A completed Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1) whereby the bidder or offeror acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.
- 2) A completed MBE Participation Schedule (Attachment D-2) whereby the bidder or offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified Minority Business Enterprises at the time of submission. The bidder or offeror shall specify the specific percentage (not range) or dollar amount of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule. **Attachment D-2 shall become part of the final contract, therefore, any changes (additions and/or deletions) must be submitted to the Procurement Officer in writing for approval.**

NOTE: The failure of an offeror to complete and submit the MBE Utilization Affidavit and the MBE Participation Schedule shall result in a determination that the proposal is not susceptible of being selected for award.

- 3) **Within 10 working days from notification** that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer.

- a) Outreach Efforts Compliance Statement (**Attachment D-3**)
- b) Subcontractor Project Participation Statement (**Attachment D-4**)
- c) If the apparent awardee has requested a waiver (in whole or in part) of the overall MBE goal or of any sub-goal as part of the previously submitted Attachment D-1, it must submit documentation supporting the waiver request that complies with COMAR 21.11.03.11.
- d) Any other documentation required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

NOTE: If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

C. CONTRACT ADMINISTRATION REQUIREMENTS:

Prime Contractor shall:

1. **Attachment D-5:** Submit monthly to the Department/Agency a report listing all unpaid invoices over 30 days old received from a certified MBE subcontractor working under the PORFP Agreement, the amount of each invoice and the reason payment has not been made. For informational purposes only, a sample prime contractor unpaid invoice report is attached.
2. **Attachment D-6:** Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit monthly to the Department/Agency a report that identifies the prime contract and lists all payments received from the Master Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. For informational purposes only, a sample MBE Subcontractor Paid/Unpaid Invoice report is attached.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed.

4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Master Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the contract.

5. **COMAR 21.11.03.13F**: A procurement agency may, upon completion of a contract, and before final payment and/or release of retainage or both, require that a prime contractor on any contract having an MBE subcontract goal, submit a final report, in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

MINORITY BUSINESS ENTERPRISE PARTICIPATION FORMS

These attachments must be submitted with technical response to the

RFP:

ATTACHMENT D-1 – *Certified MBE Utilization and Fair Solicitation Affidavit*

ATTACHMENT D-2 - *MBE Participation Schedule*

**These attachments must be submitted within 10 days after notification
of apparent award of contract:**

ATTACHMENT D3 - *Outreach Efforts Compliance Statement*

ATTACHMENT D-4 - *Subcontractor Project Participation Statement*

**These attachments must be submitted on a monthly (by the 15th) basis
after award of contract or as otherwise directed:**

ATTACHMENT D-5 - *Prime Contractor Unpaid MBE Invoice Report*

ATTACHMENT D-6 - *Subcontractor Paid/Unpaid MBE Invoice Report*

Attachment D-1

CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

This document shall be included with the submission of the bid or offer. If the bidder or offeror fails to submit this form with the bid or offer, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

In conjunction with the bid or offer submitted in response to Solicitation No. _____, I affirm the following:

1. Commitment to MBE Participation Goal or Request for Waiver (check applicable box):

☐ I acknowledge the overall certified Minority Business Enterprise (MBE) participation goal of ____ percent and, if specified in the solicitation, sub-goals of ____ percent for MBEs classified as African American-owned and ____ percent for MBEs classified as women-owned. I have made a good faith effort to achieve this goal.

OR

☐ After having made a good faith effort to achieve the MBE participation goal, I conclude I am unable to achieve it. Instead, I intend to achieve an MBE goal of _____% and request a waiver of the remainder of the goal. If I submit the apparent low bid or am selected as the apparent awardee (competitive sealed proposals), I will submit written waiver documentation that complies with COMAR 21.11.03.11 within 10 business days of receiving notification that our firm is the apparent low bidder or the apparent awardee.

2. ***I have identified the specific commitment (to include percentage of total contract) of each certified Minority Business Enterprise by completing and submitting the MBE Participation Schedule (Attachment D-2) with the bid or proposal.***

3. ***I acknowledge that the MBE subcontractors/suppliers listed on the MBE Participation Schedule will be used to accomplish the percentage of MBE participation that is included in the contract.***

4. I understand that if I am notified that I am the apparent awardee, I must submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.

- (a) Outreach Efforts Compliance Statement (**Attachment D-3**)
- (b) Subcontractor Project Participation Statement (**Attachment D-4**)
- (c) MBE Waiver Request per COMAR 21.11.03.11 (if applicable)
- (d) Any other documentation required by the Procurement Officer to ascertain bidder or

offeror responsibility in connection with the certified MBE participation goal. To include copies of subcontract agreement or agreements if requested

If I am the apparent awardee I acknowledge that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

5. In the solicitation of subcontract quotations or offers, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors.

I solemnly affirm under the penalties of perjury that the contents of this paper are true to the best of my knowledge, information, and belief.

Bidder/Offeror Name

Signature of Affiant

Address

Printed Name, Title

Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

Attachment D-2

MBE Participation Schedule

(must be submitted with the technical response to the bid or proposal)

This document shall be included with the submittal of the bid or offer. If the bidder or offeror fails to submit this form with the bid or offer, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

Prime Contractor (Firm Name, Address, Phone)	Project Description
Project Number	
List Specific Information For Each Certified MBE Subcontractor On This Project	
Minority Firm Name	MBE Certification Number
A. Specific Work To Be Performed/NAICS	
B. Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	

USE ATTACHMENT D-2 CONTINUATION PAGE AS NEEDED

SUMMARY

TOTAL MBE PARTICIPATION: _____ %
TOTAL WOMAN-OWNED MBE PARTICIPATION: _____ %
TOTAL AFRICAN AMERICAN-OWNED MBE PARTICIPATION: _____ %

Document Prepared By: (please print or type)

Name: _____ Title: _____

Attachment D-2
MBE Participation Schedule (continued)

List Information For Each Certified MBE Subcontractor On This Project	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	

Attachment D-3
Outreach Efforts Compliance Statement
(for submission within 10 days after notification of apparent award)

In conjunction with the bid or offer submitted in response to Solicitation No. _____, I state the following:

1. Bidder/ Offeror took the following efforts to identify subcontracting opportunities in these specific work categories:

2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit certified MBEs for these subcontract opportunities.

3. Bidder/Offeror made the following attempts to contact personally the solicited MBEs:

4. ☐ Bidder/Offeror assisted MBEs to fulfill or to seek waiver of bonding requirements.
(DESCRIBE EFFORTS)

- ☐ This project does not involve bonding requirements.

5. ☐ Bidder/Offeror did/did not attend the pre-bid/proposal conference
☐ No pre-bid/proposal conference was held.

Bidder/Offeror Name

By: _____
Name

Address

Title

Date

Attachment D-4
Subcontractor Project Participation Statement
(for submission within 10 days after notification of apparent contract award)

SUBMIT ONE FORM FOR EACH MBE
LISTED ON THE MBE PARTICIPATION SCHEDULE

Provided that _____ is awarded the State contract in
conjunction with _____.
(Prime Contractor Name)

Solicitation No. _____, it and _____,
(Subcontractor Name)

MDOT Certification No. _____, **intend to enter into a contract by which subcontractor shall:**
(This is not a subcontract agreement. A written copy of subcontractor agreement(s) shall be made available
to Procurement Officer upon request)

(Describe specific Work)

- ☐ No bonds are required of Subcontractor
- ☐ The following amount and type of bonds are required of Subcontractor:

By:

Prime Contractor Signature

Name

Title

Date

By:

Subcontractor Signature

Name

Title

Date

This form is to be completed
monthly by the prime
contractor.

Attachment D-5
Maryland Energy Administration
Minority Business Enterprise Participation
Prime Contractor Paid/Unpaid MBE Invoice Report

Report #: _____ Reporting Period (Month/Year): _____ Report is due to the MBE Officer by the 15th of the month following the month the services were provided. Note: Please number reports in sequence	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ MBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
--	--

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	FAX:		Email:																																				
Subcontractor Name:		Contact Person:																																					
Phone:	FAX:																																						
Subcontractor Services Provided:																																							
List all payments made to MBE subcontractor named above during this reporting period: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice#</u></th> <th style="width: 55%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="3" style="padding-top: 10px;">Total Dollars Paid: \$ _____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Paid: \$ _____			List dates and amounts of any outstanding invoices: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice #</u></th> <th style="width: 55%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="3" style="padding-top: 10px;">Total Dollars Unpaid: \$ _____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Unpaid: \$ _____		
	<u>Invoice#</u>	<u>Amount</u>																																					
1.																																							
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2.																																							
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4.																																							
Total Dollars Unpaid: \$ _____																																							

**If more than one MBE subcontractor is used for this contract, you must use separate D-5 forms.

****Return one copy (hard or electronic) of this form to the following address (electronic copy with signature and date is preferred):**

MBE Liaison Officer Maryland Energy Administration 1623 Forest Drive, Suite 300 Annapolis, Maryland 21403 bfarris@energy.state.md.us
--

Signature: _____ (Required) Date: _____

This form must be completed by
MBE subcontractor

ATTACHMENT D-6
Minority Business Enterprise Participation
Subcontractor Paid/Unpaid MBE Invoice Report

Report#: _____ Reporting Period (Month/Year): _____ Report is due by the 15th of the month following the month the services were performed.	Contract # Contracting Unit: MBE Subcontract Amount: Project Begin Date: Project End Date: Services Provided:
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MBE Subcontractor Name:																						
MDOT Certification #:																						
Contact Person:		Email:																				
Address:																						
City: Baltimore	State:	ZIP:																				
Phone:	FAX:																					
Subcontractor Services Provided:																						
List all payments received from Prime Contractor during reporting period indicated above. <table style="width: 100%;"><tr><td style="width: 60%;"><u>Invoice Amt</u></td><td style="width: 40%;"><u>Date</u></td></tr><tr><td>1.</td><td></td></tr><tr><td>2.</td><td></td></tr><tr><td>3.</td><td></td></tr><tr><td colspan="2">Total Dollars Paid: \$ _____</td></tr></table>		<u>Invoice Amt</u>	<u>Date</u>	1.		2.		3.		Total Dollars Paid: \$ _____		List dates and amounts of any unpaid invoices over 30 days old. <table style="width: 100%;"><tr><td style="width: 60%;"><u>Invoice Amt</u></td><td style="width: 40%;"><u>Date</u></td></tr><tr><td>1.</td><td></td></tr><tr><td>2.</td><td></td></tr><tr><td>3.</td><td></td></tr><tr><td colspan="2">Total Dollars Unpaid: \$ _____</td></tr></table>	<u>Invoice Amt</u>	<u>Date</u>	1.		2.		3.		Total Dollars Unpaid: \$ _____	
<u>Invoice Amt</u>	<u>Date</u>																					
1.																						
2.																						
3.																						
Total Dollars Paid: \$ _____																						
<u>Invoice Amt</u>	<u>Date</u>																					
1.																						
2.																						
3.																						
Total Dollars Unpaid: \$ _____																						
Prime Contractor:		Contact Person:																				

****Return one copy (hard or electronic) of this form to the following address (electronic copy with signature and date is preferred):**

MBE Liaison Officer Maryland Energy Administration 1623 Forest Drive, Suite 300 Annapolis, Maryland 21403 bfarris@energy.state.md.us

Signature: _____ **Date:** _____
(Required)

ATTACHMENT E – PRE-PROPOSAL CONFERENCE RESPONSE FORM

Project No. DEXR9200046
PROJECT TITLE

A Pre-Proposal Conference will be held at 10:00 AM, on October 14, 2008, at Maryland Energy Administration, 1623 Forest Drive, Suite 300, Annapolis, Maryland 21403. Please return this form by October 9, 2008, advising whether or not you plan to attend.

Return via e-mail or fax this form to the Procurement Officer:

Jeremy C. Rosendale
Procurement Officer
State of Maryland Executive Department
100 State Circle
Annapolis, MD 21401
410-974-3591
Fax 410-260-3830
jrosendale@gov.state.md.us

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.

_____ No, we will not be in attendance.

Signature

Title

ATTACHMENT F – PRICE PROPOSAL FORM INSTRUCTIONS

By submitting a Technical Proposal and this Price Proposal, the undersigned hereby declares to have carefully examined all documents, attachments and reference materials described within this RFP and Contract document. The undersigned further proposes and agrees to furnish all services necessary for the performance of the above referenced Contract for the Maryland Energy Administration in accordance with the RFP and all other documents referenced by the RFP including all attachments and Addenda issued by MEA.

The Labor Rates (hourly rates) submitted by the Offeror via this Price Proposal shall be fully loaded, including all direct and indirect costs and firm for the full term of the Contract. **Travel expenses will not be reimbursed**

Using the personnel classifications defined in the RFP, Section 3.5., provide the hourly rates in Column C. Multiple the Fully Loaded Hourly Labor Rate (C) by the State Evaluation Factor (D). Record the results in Column E, Evaluated Price. Add Column E and record the total on line 5. This is the total composite labor rate that will be used to establish the financial ranking of each offeror.

A	B	C	D	E
Item #	Title	Fully Loaded Hourly Labor Rate	State Evaluation Factor	Evaluated Price
1	Project Manager	\$	30%	\$
2	Creative Design Professionals	\$	50%	\$
3	Research Analyst	\$	15%	\$
4	Administrative Specialist	\$	5%	\$
5. TOTAL COMPOSITE LABOR RATE (Add Column E)				\$

Authorized Signature _____

Printed Name & Title: _____

Company Name: _____

Address: _____

Office Telephone: _____ Office Fax No.: _____

FEIN: _____ Email: _____

ATTACHMENT G - NON-DISCLOSURE AGREEMENT

THIS AGREEMENT ("Agreement") is made this ____ day of _____, 200 __, by and between the State of Maryland (hereinafter referred to as "the State"), acting by and through its Maryland Energy Administration (hereinafter referred to as the "Department"), and _____, a corporation with its principal business offices located at _____ (hereinafter referred to as "Offeror").

RECITALS

WHEREAS, Offeror intends to submit a proposal in response to RFP # DEXR9200046 for Financial and Programmatic Management Consultant (the "RFP") for the Maryland Energy Administration; and

WHEREAS, in order for the Offeror to submit such a proposal, it will be necessary for the State to provide the Offeror with access to certain confidential information (collectively, the "Confidential Information").

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the Offeror's proposal to the RFP (hereinafter referred to as the "Proposal"), and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Recitals. The Recitals are not merely prefatory but are an integral part hereof.
2. Offeror's qualifications. Offeror represents and warrants that:
 - A. It is qualified to do business in the State and that it will take such actions, from time to time hereafter, as may be necessary to remain so qualified during the period covered by this Agreement;
 - B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the period covered by this Agreement;
 - C. It is in compliance with all federal, State and local laws, regulations, and ordinances applicable to its business and it is not aware of any actual or threatened actions, claims, suits, orders, or other matters that would prevent or limit its ability to satisfactorily and

fully perform its obligations under this Agreement or under any subsequent agreement that it may enter into with the State in connection with its Proposal; and

- D. It is the correctly named and identified entity that intends to submit the Proposal and it is not controlling, controlled by, or under common control with the entity that intends to submit the Proposal. If the Proposal will be submitted by a joint venture or any other group of separate business entities, each entity comprising such group has been clearly identified in and has executed this Agreement.

3. Term of Agreement. The term of this Agreement shall commence on the date it is fully signed by both parties and shall continue thereafter until the earlier to occur of: (i) three (3) years following the return of the Confidential Information in accordance with Section 6 of this Agreement; (ii) receipt of written notice given by the State to Offeror terminating this Agreement; or (iii) the date upon which the terms of this Agreement are expressly superseded by the confidentiality provisions of any subsequent agreement which the parties may enter into in connection with the Proposal. If all Confidential Information is not returned to the State in accordance with Section 6 of this Agreement, then this Agreement shall continue in full force and effect until such time as all Confidential Information is returned to the State and the State acknowledges its receipt in writing.

4. What constitutes "Confidential Information". Confidential Information means any and all information provided by or made available by the State to Offeror in connection with the Proposal, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that Offeror views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State for Offeror to prepare and submit its Proposal.

5. Use of Confidential Information. In consideration of the State's allowing Offeror access to the Confidential Information:

A. Offeror hereby agrees to hold the Confidential Information in trust and in strictest confidence, and to take all measures necessary to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

B. Offeror shall not, without the State's prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of preparing its Proposal. Offeror shall limit access to Confidential Information to its employees and agents ("Offeror's Personnel") who have a demonstrable need to know such Confidential Information in order to prepare the Proposal and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of Offeror's Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute and date Exhibit A next to their name and by doing so agrees to be subject to the terms and conditions of this Agreement to the same extent as Offeror. If Offeror intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting

in the preparation of the Proposal or who will otherwise have a role in performing any aspect of the Proposal, Offeror shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent as it may deem appropriate in its sole and absolute subjective discretion.

6. Return of Confidential Information. Offeror shall return all Confidential Information to the Department within five (5) business days of the State's acceptance of Offeror's Proposal. If Offeror does not submit a Proposal, Offeror shall return the Confidential Information to the Department within 30 days of receiving the material. All Confidential Information returned to the State shall be accompanied by the Certification that is attached hereto and made a part hereof as Exhibit B and shall be signed by an officer of Offeror authorized to bind the Offeror.

7. Liability for Confidential Information. Offeror acknowledges that any failure by Offeror or Offeror's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, Offeror and each of Offeror's Personnel agree that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Offeror and each of Offeror's Personnel consent to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages from Offeror and/or each of Offeror's Personnel, as applicable, for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by Offeror or any of Offeror's Personnel to comply with the requirements of this Agreement, Offeror and such Offeror's Personnel shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.

8. Unauthorized Use. Offeror shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of Confidential Information by any of Offeror's Personnel or Offeror's former Personnel. Offeror shall, at Offeror's expense, cooperate with the State in seeking injunctive or other equitable relief against any such person.

9. Governing law. This Agreement shall be governed by the laws of the State of Maryland.

10. False and fraudulent statements. Offeror acknowledges that pursuant to Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland a person may not willfully make a false or fraudulent statement or representation of a material fact in connection with a procurement contract. Persons making such statements are guilty of a felony and on conviction subject to a fine of not more than \$20,000 and/or imprisonment not exceeding 5 years or both. Offeror further acknowledges that this Agreement is a statement made in connection with a procurement contract.

11. Signing authority for Offeror. The individual signing below on behalf of Offeror warrants and represents that s/he is fully authorized to bind Offeror to the terms and conditions specified in

this Agreement. The individual signing below acknowledges that a breach of this warranty and representation may result in personal liability.

12. Other obligations. The parties further agree that, unless otherwise agreed in writing: (a) this Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and none of the terms of this Agreement may be amended or modified except by a written instrument signed by both parties; (b) the State may waive any rights under this Agreement only by written waiver duly signed by the State, and no failure by the State to exercise or delay in exercising a right under this Agreement shall constitute a waiver of such right; (c) the rights and obligations of Offeror may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State; (d) the State makes no representations or warranties as to the accuracy or completeness of any Confidential Information; (e) the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement; (f) all notices under this Agreement must be in writing and shall be deemed to have been delivered to and received by a party, and will otherwise become effective, on the date of actual delivery thereof (by personal delivery, express delivery service or certified mail) to the Notice Address of such party set forth below; and (g) signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures.

14. Notices. All notices hereunder shall be in writing and either delivered personally, by express delivery, or sent by certified or registered mail, postage prepaid as follows:

If to the State:
Maryland Energy Administration
1623 Forest Drive, Suite 300
Annapolis, Maryland 21403
Attention: Brandon Farris

If to the Offeror:

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

STATE OF MARYLAND

OFFEROR

By: MARYLAND ENERGY
ADMINISTRATION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

**LIST OF OFFEROR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS
TO THE CONFIDENTIAL INFORMATION**

Printed Name and Address of Individual/Agent	Employee (E) or Agent (A)	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

EXHIBIT B

CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Agreement by and between the State of Maryland and _____ (“Offeror”) dated _____, 200__ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Offeror to this affirmation.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.

DATE: _____

NAME OF OFFEROR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

ATTACHMENT H – Conflict of Interest Affidavit/Disclosure

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a bidder, Offeror, Contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

C. The bidder or Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

E. The bidder or Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the bidder or Offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the bidder or Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date:_____By:_____
(Authorized Representative and Affiant)

Attachment I – Living Wage Requirements for Service Contracts

Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Title 18, State Finance and Procurement Article, Annotated Code of Maryland and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
 - (1) A Contractor who:
 - (A) has a State contract for services valued at less than \$100,000, or
 - (B) employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A Subcontractor who:
 - (A) performs work on a State contract for services valued at less than \$100,000,
 - (B) employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (C) performs work for a contractor not covered by the Living Wage Law as defined in B(1)(B) above, or B (3) or C below.
 - (3) Service contracts for the following:
 - (A) services with a Public Service Company;
 - (B) services with a nonprofit organization;
 - (C) services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (D) services between a Unit and a County or Baltimore City.

- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent contractor or assign work to employees to avoid the imposition of any of the requirements of Title 18, State Finance and Procurement, Annotated Code of Maryland.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner of Labor and Industry shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's Website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in §18-103(c), State Finance and Procurement Article, Annotated Code of Maryland, shall not lower an employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner of Labor and Industry.
- H. A Contractor/Subcontractor may reduce the wage rates paid under §18-103(a), State Finance and Procurement, Annotated Code of Maryland, by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland.
- I. Under Title 18, State and Finance Procurement Article, Annotated Code of Maryland, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the

Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.

- J. Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.

Attachment-J Affidavit, Maryland Living Wage Requirement

Affidavit of Agreement

Maryland Living Wage Requirements-Service Contracts

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt form the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt form Maryland's Living Wage Law for the following reasons (check all that apply):

- _____ Bidder/Offeror is a nonprofit organization
- _____ Bidder/Offeror is a public service company
- _____ Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- _____ Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with Title18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living rate in effect at the time service is provided for hours spend on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts

B. _____ (initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply):

- _____ All employee(s) proposed to work on the contract will spend less than one-half of the employee's time during every work week on the State contract;
- _____ All employee(s) proposed to work on the contract will be 17 years of age or younger during the duration of the contract; or
- _____ All employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized
Representative: _____

Signature of Authorized Representative

Date

Title

Witness Name (Typed or Printed)

Witness Signature

Date